



August 8, 2000

Ms. Julie B. Tebbets
Ayers & Ayers
1201 Main Street, Suite 2460
Dallas, Texas 75202

OR2000-3010

Dear Ms. Tebbets:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137855.

The City of Balch Springs (the "city"), which you represent, received a request for written confessions obtained by a specified police officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have provided the responsive information to this office for review.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to inform the requestor that it has sought a decision from the Attorney General and to provide the requestor with a copy of its request for decision, within ten business days of the governmental body's receipt of the request for information. Gov't Code § 552.301(d). You assert that you received the subject request for information on May 24, 2000. You are silent as to what notice you provided to the requestor regarding your request for an attorney general decision, or when any such notice was sent. The materials submitted by you are devoid of any indication that any materials were copied to the requestor. The requestor asserts that your letter to him is postmarked June 15, 2000. In support of his assertion he provides a photocopy of an envelope with a return address indicating that this item was posted by you. That envelope is postmarked June 15, 2000. In the absence of any assertion or indication from the city that the required notice was timely

posted to the requestor, and with evidence to the contrary, we conclude that the city failed to comply with the requirements of section 552.301(d).

If a governmental body does not “provide the requestor with the information required by section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

Because section 552.108 is designed to protect a governmental body’s interest, we conclude that the department has waived the exception as to the submitted information as a result of its failure to comply with section 552.301(d) of the Government Code. *See generally* Open Records Decision No. 630 (1994). Therefore, you may withhold the requested information only as noted below.

Government Code section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information made confidential by statute. Section 261.201 of the Family Code governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
 - (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
 - (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that part of the responsive information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. As you have not cited any specific rule that the city has adopted with regard to the release of this type of information, these records are

presumed confidential in their entirety. See Open Records Decision No. 440 at 2 (1986). We have marked the submitted materials to indicate that which falls within the ambit of section 261.201 of the Family Code. The city must withhold this information under section 552.101 of the Government Code.

Section 58.007(c) of the Family Code makes confidential law enforcement records concerning juvenile conduct that occurred on or after September 1, 1997. This section reads as follows:

- (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
 - (1) if maintained on paper or microfilm, kept separate from adult files and records;
 - (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
 - (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

We have marked that portion of the submitted materials that involve juvenile offender conduct that occurred after September 1, 1997. This information must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right to privacy. This right protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984)

(concluding that details of self-inflicted injuries are presumed protected by common law privacy) 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). From our review of the submitted materials, we do not find any information that is protected by common law privacy other than information which is also protected under statute.

In summary, you must withhold the information that we have marked as confidential, and must release the remaining responsive information. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

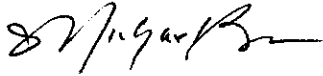
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 137855

Encl Submitted documents

cc: Mr. Marc Lenahan
Lenahan Law
6517 Hillcrest Avenue, Suite 306
University Park, Texas 75205
(w/o enclosures)